



**THE STOCK EXCHANGE OF HONG KONG LIMITED**  
(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)  
(the “Exchange”)

26 September 2012

**The GEM Listing Committee of The Stock Exchange of Hong Kong Limited (“GEM Listing Committee”) censures Zhejiang Prospect Company Limited (“Company”) (Stock Code: 8273) for breaching Rules 19.34, 19.36, 19.38, 19.40, and 19.49 of the Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited (“GLR”).**

**The GEM Listing Committee further censures:**

- (1) Mr Tang Li Min, executive director of the Company (“Mr LM Tang”);**
- (2) Mr Hong Guo Ding, executive director of the Company (“Mr GD Hong”);**
- (3) Mr Fei Guo Yang, executive director of the Company (“Mr Fei”);**
- (4) Mr Hong Chun Qiang, executive director of the Company (“Mr CQ Hong”);**
- (5) Mr Tang Cheng Fang, non-executive director of the Company (“Mr CF Tang”);**
- (6) Mr Li Zhang Rui, non-executive director of the Company (“Mr Li”);**
- (7) Mr Ma Hong Ming, independent non-executive director of the Company (“Mr Ma”);**
- (8) Mr Wang He Rong, independent non-executive director of the Company (“Mr Wang”); and**
- (9) Mr Lu Guo Qing, independent non-executive director of the Company (“Mr Lu”) (together “Directors”),**

**for their respective breaches of their obligations under the GLR and the Director’s Undertaking to the Exchange to comply with the GLR to the best of their ability and to use their best endeavours to procure the Company’s GLR compliance set out in Appendix 6B to the GLR (“Undertaking”).**

## **Facts**

### Transaction 1

On 23 December 2008, the Company entered into an agreement to acquire land use rights and properties for RMB64 million. On 26 December 2008, the Company paid RMB32 million deposit. The transaction constituted a very substantial acquisition under the GLR. The Company did not publish an announcement to disclose the transaction on or shortly after 23 December 2008, did not publish a circular and did not seek shareholders' approval before entering into the transaction.

### Termination of Transaction 1

On 20 February 2009, Transaction 1 was terminated (the "**Termination**"). The deposit was fully refunded to the Company on 3 March 2009. No announcement was made to disclose the Termination.

Following the auditors' alert in the course of the audit of the Company's annual results for the year ended 31 December 2008 ("**2008 Annual Results**"), brief information of Transaction 1 and the Termination was included in the 2008 Annual Results published on 26 March 2009.

### Transaction 2

On 1 November 2009, the Company entered into an agreement to acquire patent rights of automobile accessories for RMB35 million. On 26 December 2009, the Company paid RMB25 million deposit. The balance of payment was made in May and June 2010. Transaction 2 constituted a major transaction under the GLR. The Company did not publish an announcement to disclose the transaction on or shortly after 1 November 2009, did not publish a circular within 21 days afterwards, and did not obtain shareholders' approval before entering into the transaction.

Upon auditors' alert in the course of the 2009 annual audit that Transaction 2 might be a notifiable transaction under the GLR, the Company included brief information of Transaction 2 in its annual results for the year ended 31 December 2009 ("**2009 Annual Results**") published on 12 March 2010.

On 24 June 2010, the Company published an announcement disclosing Transaction 2 and details, admitting non-compliance with the GLR and apologising for late disclosure. It also published a circular regarding Transaction 2 on 29 October 2010. On 20 January 2011, the controlling shareholder, interested in approximately 53.56 per cent of the Company's issued share capital, gave a written resolution to ratify Transaction 2.

Mr LM Tang, Mr GD Hong, Mr Fei, Mr CQ Hong, and Mr CF Tang approved all of Transaction 1, the Termination, and Transaction 2 at board meetings before the transactions and Termination. Mr Ma participated in approving Transaction 2. Directors identified in this paragraph are referred to as "**Group A Directors**". Despite knowledge of Transactions 1, 2 and the Termination (and in the case of Mr Ma, his knowledge of Transaction 2), there is no evidence that Group A Directors have considered GLR implications of these transactions and the Termination or that they have taken steps to ensure that GLR compliance was duly considered and applicable GLR duly complied with.

Mr Li, Mr Wang and Mr Lu (together “**Group B Directors**”) did not attend the board meetings to consider and approve any of Transactions 1 or 2 or the Termination. However, they had prior notices of the meetings and received board minutes afterwards. They therefore had or ought to have knowledge from those documents of the transactions and the Termination. Despite such knowledge, they did not enquire or take any action to ascertain or ensure the Company’s GLR compliance regarding the transactions and the Termination.

### **Allegations of breaches by the Listing Division (the “Division”)**

#### Company’s breach of GLR 19.34, 19.36, 19.38, 19.40, and 19.49

Based on the relevant percentage ratios calculated pursuant to GLR 19.06 and 19.07, Transaction 1 constituted a very substantial acquisition (i.e. the relevant percentage ratio is 100 per cent or more), and Transaction 2 constituted a major transaction (i.e. the relevant percentage ratio is 25 per cent or more, but less than 100 per cent). Each of Transaction 1 and Transaction 2 was subject to:

- (1) GLR19.34 which requires that as soon as possible after the terms of the transactions have been finalised, the listed issuer must inform the Exchange and submit an announcement to the Exchange to be published on the GEM website; and
- (2) GLR19.38 which requires that the listed issuer must send a circular to its shareholders and the Exchange and arrange for its publication.

Further, Transactions 1 and 2 were both subject to prior shareholder approval requirement under GLR 14.49 and GLR 14.40 respectively.

GLR 19.36 requires that where a transaction previously announced pursuant to Chapter 19 of the GLR is terminated, the listed issuer must as soon as practicable announce this fact by means of an announcement.

In relation to Transaction 1, the Company did not comply with any of the requirements under GLR 19.34, 19.38 and 19.49. The Division alleges that the Company breached these GLR provisions.

Upon the termination of Transaction 1, the Company was required to publish an announcement under GLR 19.36 as soon as practicable. It has not done so. The Division alleges that the Company breached GLR 19.36.

In relation to Transaction 2, the Company did not comply with any of the requirements under GLR19.34, 19.38 and 19.40. The Division alleges that the Company breached these GLR provisions.

According to the Company, at the time of contemplating Transaction 2, it formed the view that Transaction 2 was of revenue nature conducted in the Company’s ordinary course of business and should be exempt from GLR application. No evidence was provided in support of this assertion. In the Division’s view, acquisition of patent rights in Transaction 2 was not revenue in nature conducted in the course of the Company’s principal business activities (of manufacture and sale of universal joints for automobiles). The exemption under GLR19.04(1)(g) did not apply.

### Directors' breach of Undertaking

The Company repeatedly breached GLR in respect of its material transactions two years in a row. The Directors took no action to ensure the Company's compliance with GLR in relation to Transaction 1. The GLR breaches arising from Transaction 2 occurred just months after discovery of the breaches on Transaction 1. According to the Company, all Directors were aware of the breaches arising from Transaction 1 after their discovery. Despite such knowledge, none of the Directors took any action to ensure the Company's future GLR compliance regarding notifiable transactions. They continued to take no action to ensure Transaction 2 was rule compliant. They did not seek professional advice or consult the Division.

The Company acknowledged that it did not have written procedures regarding internal controls in place to ensure GLR compliance at the relevant time. The Company and the Directors did not identify what internal controls the Company had in place at the relevant time. It appears that any internal controls which the Company might have in place at the time did not prevent or detect the Company's GLR breaches. The Division therefore alleges that the Company did not have adequate or effective internal controls to ensure its GLR compliance. The Division notes with concern the lack of adequate internal controls despite the fact that the Company has been listed since 2004 and for which the Directors were responsible.

In the light of the above, the Division also alleges that:

- (1) All Group A Directors namely Mr LM Tang, Mr GD Hong, Mr Fei, Mr CQ Hong, Mr CF Tang and Mr Ma breached their respective Undertakings, in that:
  - (a) having knowledge of and involvement in the consideration and approval of Transaction 1, Transaction 2, and the Termination, they have failed to prevent the Company's GLR breaches; and
  - (b) they have failed to establish and maintain adequate and effective internal controls to ensure the Company's GLR compliance.
- (2) All Group B Directors namely, Mr Li, Mr Wang and Mr Lu, also breached their respective Undertakings, in that:
  - (a) having knowledge of Transactions 1 and 2 as well as the Termination from notice of the board meetings and board minutes received, they have failed to make enquiries and follow up or taken any other steps to ensure the Company's compliance with the GLR; and
  - (b) they have failed to establish and maintain adequate and effective internal controls to ensure the Company's GLR compliance.

### Breach of GLR 5.20 by Mr GD Hong

Mr GD Hong has been the Company's Compliance Officer since 2004. Under GLR 5.20, as Compliance Officer, he was responsible for advising on and assisting the board in implementing procedures to ensure that the Company complies with the GLR.

Mr GD Hong attended the board meetings to consider and approve Transaction 1, the Termination and Transaction 2. However, the board did not consider and did not take steps to ensure the Company's compliance with GLR in relation to the transactions and the Termination. Neither did any of the board minutes record Mr GD Hong having provided advice to the board on GLR compliance or internal procedures to ensure GLR compliance. There is nothing to demonstrate that Mr GD Hong has performed his duty as the Compliance Officer under GLR 5.20.

The Division therefore alleges that Mr GD Hong breached GLR 5.20. With such a breach, the Division also alleges that Mr GD Hong breached his Undertaking for failing to comply with the GLR to the best of his ability.

### **Settlement**

As a consequence of a settlement, the Company and the Directors admitted the breaches asserted by the Division above and accept the sanctions and directions imposed on them by the GEM Listing Committee as set out below.

### **Findings of breach by the GEM Listing Committee**

On the basis of the facts and circumstances and the admission of the breaches by the Company and the Directors, the GEM Listing Committee finds that:

- (1) the Company breached GLR 19.34, 19.38, 19.36, 19.40 and 19.49;
- (2) Mr GD Hong breached GLR 5.20 for failing to perform his duty as the Compliance Officer; and
- (3) the Directors have breached their Undertakings as asserted by the Division.

### **Regulatory concern**

In the GEM Listing Committee's view, both Transactions 1 and 2 are material transactions to the Company requiring prior shareholders' approval, which the Company's management does not appear to have considered at the time. As a result of the Company's breaches, shareholders have repeatedly been deprived of timely receipt of information from the Company of its material transactions and the opportunity to vote on those transactions before they were entered into. The GEM Listing Committee disapproves such conduct and regards it unacceptable.

In particular, the GEM Listing Committee expresses concern that:

- (1) The Company repeatedly breached GLR in relation to material transactions in two consecutive years.
- (2) There is nothing to suggest the Directors have considered the GLR implications or consulted professional advice on the GLR compliance before Transaction 1 was entered into or before the termination of Transaction 1.
- (3) After becoming aware of the breaches relating to Transaction 1, the Directors did not take any remedial measures to avoid similar breach from recurring, and the Company committed further GLR breaches seven months later in relation to Transaction 2.
- (4) The breaches were not detected by any director or Compliance Officer of the Company nor through the Company's internal controls. The Company and its Directors became aware of the GLR requirements which applied to the transactions only after alert by the auditors in the course of 2008 and 2009 audits.
- (5) The Company and Directors submitted that at the time they entered into Transaction 2, they thought the transaction would be exempt under GLR. This appears to be a self serving submission. There is nothing produced to substantiate the assertion. Even on the basis of the assertion, with Directors' knowledge of the earlier breach on Transaction 1, prudent directors making efforts to ensure the Company's GLR compliance would have taken steps to verify the view they alleged to have formed at the time for example by consulting professional advice. There is nothing to suggest the Company and the Directors have taken any steps at all.
- (6) The Company did not have adequate internal controls in place to ensure GLR compliance, which was attributable to the board's failure to do so.
- (7) Mr GD Hong was appointed the Compliance Officer in 2004. There is serious concern that the directors including Mr GD Hong himself did not appreciate the importance and duty of the Compliance Officer. The GEM Listing Committee emphasises that the Exchange attaches considerable importance to Compliance Officers' due discharge of duties under GLR 5.20. Accepting appointment to this office is clearly not mere paper appointment. Directors designated to this role must understand and duly discharge their duties. Those who fail to do so should make no mistake that they will be subject to disciplinary action and sanctions by the Exchange.
- (8) This matter reveals the Company and the Directors did not have proper regards to GLR compliance and did not have correct understanding of the GLR requirements regarding notifiable transactions. This gives rise to concern over the will and ability of the Directors to ensure the Company's future GLR.

The GEM Listing Committee therefore considers the breaches by the Company and the Directors serious warranting public sanctions. It also considers that remedial actions were required of the Company and the Directors to ensure and enhance their future compliance with the GLR. In particular it is crucial that the Company and the Directors seek and avail to themselves external professional advice and assistance on GLR related matters and the Compliance Officer duly performs his duties.

## Sanction

Accordingly, having made the findings of breach against the Company and each of the Relevant Directors as stated above, the GEM Listing Committee censures:

- (a) the Company for its breaches of GLRs 19.34, 19.36, 19.38, 19.40, and 19.49;
- (b) Mr GD Hong for his breach of GLR 5.20 and Undertaking;
- (c) Mr LM Tang, Mr Fei, Mr CQ Hong, Mr CF Tang and Mr Ma for their respective breaches of Undertaking; and
- (d) Mr Li, Mr Wang and Mr Lu for their respective breaches of Undertaking.

Further, the GEM Listing Committee makes the following directions:

- (1) The Company is to:
  - (a) retain an independent professional adviser satisfactory to the Division (“**Adviser**”) to conduct a thorough review of and make recommendations to improve the Company’s internal controls including its procedures and compliance systems to ensure compliance with (i) the obligations under Chapters 19 and 20 and (ii) Appendix 15 of the GLR within two weeks from publication of this Press Release;
  - (b) submit the proposed scope of retainer to the Listing Division for comment before appointment of the Adviser;
  - (c) provide the Division with the written report of the Adviser containing such recommendations within two months from the publication of the Press Release; and
  - (d) furnish the Listing Division with the Adviser’s written report on the Company’s full implementation of the Advisers’ recommendations within a further period of two months.
- (2) The Company is to (I) appoint an independent Compliance Adviser (as defined in GLR Chapter 6A namely, an entity licensed or registered under the Securities and Futures Ordinance for Type 6 regulated activity and permitted under its licence or certificate of registration to undertake work as a sponsor, and as applicable, which is appointed pursuant to rule 6A.19 or rule 6A.20 to undertake work as a Compliance Adviser) satisfactory to the Division on an ongoing basis for consultation on GLR compliance for two years within two weeks from publication of the Press Release; and (II) submit the proposed scope of retainer to the Division for comment before such appointment.
  - (a) The Compliance Adviser shall be accountable to the Company’s Audit Committee.

- (b) The scope of retainer of the Compliance Adviser is to include, but is not limited to, the requirements that during the two-year retainer period, the Compliance Adviser is to, as part of its responsibilities and obligations, attend every Board meeting proposed to be held by the Company, and actively advise the Company and its Directors on GLR compliance.
- (c) During the two-year period when the Compliance Adviser is retained by the Company, the Company is to:
  - (i) provide the Compliance Adviser with all notices of Board meetings and all documents to be tabled and/or considered at Board meetings; and
  - (ii) provide half-yearly written reports to the Division, endorsed by all directors, confirming that (I) the Company has provided the Compliance Adviser with notices of all Board meetings and all documents to be tabled or considered at such Board meetings; (II) the Compliance Adviser has attended all Board meetings held by the Company during the period; and (III) the Company has kept a written record of the Compliance Adviser's advice to the Company and action taken by the Company following receipt of such advice to ensure GLR compliance. Such reports are to be delivered within two weeks of the end of every six-month interval from the commencement date of engagement of the Compliance Adviser. The Compliance Adviser is to give signed written endorsement of the Company's half-yearly reports regarding (II) above.
- (3) Within the two-year period of the Compliance Adviser's appointment, the Company's Compliance Officer is to:
  - (a) actively participate in the consultation with the Compliance Adviser as mentioned in (2) above, and provide evidence in support to the Division at the same time as the Company's provision of evidence of consulting the Compliance Adviser; and
  - (b) provide half-yearly written reports to the Division, endorsed by all directors of the Company, providing details and evidence of his discharge of duty under GLR5.20 to advise on and assist the board in implementing procedures to ensure that the Company complies with the GLR. Such reports are to be delivered within two weeks of the end of every six-month interval from commencement date of engagement of the Compliance Adviser.
- (4) Should Mr GD Hong cease to be the Company's Compliance Officer in the two year period referred to at paragraph (3) above, the Company and the Relevant Directors who remain in office at the relevant time, agree to use their best endeavours to procure Mr GD Hong's successor(s) to observe the direction at paragraph (3) above.



- (5) Each of the Directors (who is a current director of the Company) is to undergo 24 hours of training on GLR compliance (including notifiable transaction requirements), director's duties and corporate governance matters to be given by the Hong Kong Institute of Chartered Secretaries, Hong Kong Institute of Directors or other course providers approved by the Division ("**Training**"), to be completed within 90 days from publication of this Press Release. The Company has to provide the Division with the training provider's written certification of full compliance with this training requirement by all of the Directors within two weeks after full compliance.
- (6) The Company is to publish an announcement to confirm compliance with the directions at paragraph (1), the appointment of the Compliance Adviser at paragraph (2) above; and on directors' training at paragraph (5) above. Within two weeks after the respective fulfillment of each of the directions, the Company is to submit drafts of the announcements for the Division's comment and may only publish the announcements after the Division has confirmed it has no further comment on them. The last announcement required to be published is to include the confirmation that all these directions have been fully complied with.

For the avoidance of doubt, the Exchange confirms that the above sanctions and directions apply only to the Company and the Directors identified above and not to any other past or present member of the Company's Board of Directors.